

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSE MIGUEL PEREZ,
Petitioner,

v.

EDWARD KLEM, ET AL.,
Respondents.

Civil Action No. 06-2408

MEMORANDUM/ORDER

On June 7, 2006, petitioner filed the above-captioned petition in this court seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. Petitioner has filed one previous petition in this court pursuant to 28 U.S.C. § 2254, Civil Action Number 00-4901, which attacked the same conviction and/or sentence. That civil action was considered, and denied, on the merits. In such circumstances, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. §§ 2241–2266, provides in relevant part that before a “second or successive” habeas petition can be filed with the district court, the petitioner must first file a motion in “the appropriate court of appeals” for an order “authorizing the district court to consider” the petition, pursuant to 28 U.S.C. § 2244(b)(3)(A). Without such authorization from the court of appeals, the district court lacks subject matter jurisdiction to consider the habeas petition. *See Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998); *Felker v. Turpin*, 518 U.S. 651, 657 (1996); *Benchoff v.*

Colleran, 404 F.3d 812, 816 (3d Cir. 2005); *In re Minarik*, 166 F.3d 591 (3d Cir. 1999).

Therefore, petitioner's current habeas petition is "second or successive" and this court lacks subject matter jurisdiction to consider it. The "appropriate court of appeals" in which a motion should be filed for authorization to proceed in this court is the United States Court of Appeals for the Third Circuit. If that court grants that motion, petitioner can then return to this court and refile his "second or successive" habeas petition.

Accordingly, this 28th day of December, 2006, it is hereby ORDERED that this action is DISMISSED WITHOUT PREJUDICE on the ground that this court lacks subject matter jurisdiction to consider it, and the Clerk of Court shall mark this matter as CLOSED for all purposes, including statistics.

/s/ Louis H. Pollak

Pollak, J.